

Proceeding: UNIVERSAL SERVICE ☒ Record 1 of 1
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Submission Type: CO ☒ Submission Status: DISSEMINATED ☒ Viewing Status: UNRESTRICTED ☒
Subject:
DA Number: Ex parte Late Filed: ☐ File Number:
Calendar Date Filed: 05/21/1998 3:24:30 PM Date Disseminated: 05/22/1998
Official Date Filed: 05/21/1998 Filed From: INTERNET
Confirmation # 1998521975289

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MAY 21 1998

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96-45
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Nassau County BOCES
May 21, 1998

Before The
Federal Communications Commission
Washington, DC 20554

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In the matter of

Proposed Revision of Maximum Collection
Amounts for Schools and Libraries and
Rural Health Care Providers

CC Docket No. 96-45
DA 98-872

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MAY 21 1998

FEDERAL COMMUNICATIONS COMMISSION
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**OPPOSITION TO PROPOSAL SETTING MAXIMUM COLLECTION
AMOUNTS FOR SCHOOLS AND LIBRARIES AT A LEVEL
SIGNIFICANTLY BELOW THE ANNUAL CAPS ADOPTED
IN THE *UNIVERSAL SERVICE ORDER*¹**

The newly created universal service support mechanism for school and libraries has generated tremendous interest and involvement across the country in the use of technology for educational purposes. Applicants have already made a considerable investment in time and effort in this program. Although no discounts have yet been approved, Nassau County BOCES believes that the program has already produced benefits for E-rate applicants and vendors alike in terms of technology planning and implementation. To maintain this momentum, it is important that the Commission not adopt a collection limit that reduces its commitment to the E-rate program.

The Board of Cooperative Educational Services for Nassau County ("Nassau County BOCES") on Long Island, New York, runs a number of special educational schools and serves 56 public school districts in Nassau County. In aggregate, BOCES and the public school districts serve almost 200,000 students in Nassau County. Under the E-rate program, the schools in Nassau County span the complete range of discount rates, from 20% to 90%. Nassau County BOCES is an applicant for E-rate discounts for its own schools and will also be a provider of discounts as an instructional LAN vendor for certain public school districts.

Last fall, Nassau County BOCES established a small working group, called "E-Rate Central," to coordinate the required application forms for both the BOCES

¹ Nassau County BOCES believes that its comments, based specifically on its experience with the universal service support program for schools and libraries, are also generally applicable to the rural health care program.

schools and the County's public school districts. Because of the size and complexity of the filing process, this has become a full time job for three people.² E-Rate Central has distributed numerous memos and run multiple seminars for its school districts. It has collected data on student poverty levels and on eligible contracts and tariffs. To support Nassau BOCES' role as a vendor, it has helped revise numerous contracts to comply with the E-rate regulations regarding eligible services. And, it has worked closely with vendors, New York State E-rate coordinators, and the SLC itself.

The efforts by Nassau County BOCES and public school districts represent sizeable investments in time, dollars, and business commitments to meet the goals, objectives, and regulations of the E-rate program for the initial 1998 funding year. Additional investments will be needed, beginning this summer, for 1999. These investments will be made only if it is clear that E-rate is, and will remain, a viable national program.

The \$2.25 billion is a modest amount for a federal program, but it has been enough of a lure to generate nationwide attention by schools and libraries and to spark additional interest in the use of educational technology. Based on early estimates of discount demand 1998 (\$2.02 billion), reflecting only applications received as of April 28, it appears that the total demand will exceed the annual cap in 1998 and could be still higher in future years. Any move by the Commission to limit 1998 collections to an amount below the cap limit would seriously jeopardize the E-rate program.

Although the Commission's request for comments makes it clear that this inquiry is directed only at the 1998 collection amount, not at the annual caps adopted in the *Universal Service Order*, the two amounts are related in several ways.

1. Depending upon how retroactive credits for discounts approved in 1998 are treated, a maximum collection of \$1.67 billion might be sufficient to fund actual discount reimbursements needed to be paid out prior to December 30, 1998. This presumes that discounts provided retroactive to January 1, 1998, would not be given back to the schools and libraries in a lump sum, but would be credited against future services over time. There are two problems with this approach.
 - a. Apparently, a large portion of the discounts requested to date have been for internal connections, many of which are likely to have been paid as a one-time charge. There may be no future service revenues against which to credit retroactive discounts.

² Nassau County BOCES believes that there is a pressing need to simplify the E-rate program in terms of the bid posting process, discount rate calculations, funding periods, and definitions of eligible services (and has recommended such changes to the SLC). Simplification of the entire E-rate process would benefit both applicants and vendors, and would help reduce fund administration costs.

- b. Even for on-going monthly services, the use of retroactive credits has the undesired effect of creating de facto long-term and anti-competitive contracts. As example, consider the case of a school with a 90% discount that has been billed at full rates — say, \$100/month — for an eligible service since January 1, but that doesn't begin to get discounts until July 1. With an ongoing net rate of \$10/month, reduced to \$0 because of retroactive credits totaling \$540, it would take the school 54 months to fully recover the approved discount. Economically, this would have the effect of locking the school into that vendor for 4½ years.
2. The SLC's stated goal is to have all initial applications for the 1999 funding year processed by December 31, 1998, so that no retroactive credits will be required beyond the 1998 year. If retroactive credits from 1998 are to be paid out in subsequent years, actual funding requirements in those years could exceed the current \$2.25 billion annual cap.
3. If retroactive credits are to be paid entirely in 1998, then a \$1.67 billion collection rate would be insufficient to fund either the \$2.25 billion cap amount or even the estimated \$2.02 billion³ that includes all requests received within the initial window period. If full funding cannot be assured to meet even the window period requests, approvals of initial discounts may have to be delayed until an appropriate allocation mechanism is devised and adjudicated.
4. Funding at the Commission's proposed collection limit is not just a 1998 problem. On an on-going basis, the Commission's formula yields a \$524 quarterly collection rate. Without an increase in this rate, perhaps based on a growing long distance marketplace, collections would fall \$154 million short of the cap amount each year ($\$2,250 - 4 \times \$524 = \$154$).

The primary basis for the Commission's proposal is to set 1998 collections to a breakeven level governed by long distance access charge reductions so as to avoid "...excessive and unnecessary rate churn." While recognizing that several carriers have lobbied or litigated against the increased universal service charges, Nassau County BOCES strongly believes that "rate churn" is unlikely to be a problem. There are several reasons for this belief.

1. Long distance is an intensively competitive business. As a matter of course, users are confronted daily with an ever-changing array of rates. "Rate churn" is already a fact of life, driven by aggressive and opportunistic carrier

³ Assuming that requested discounts are spread evenly over 12 months, and that discounts for services provided in December are actually reimbursed in January, then total funding for the estimated amount to be made in calendar 1998 would be \$1.85 billion ($11/12 \times \$2.02 = \1.85), still less than the proposed collection amount. In reality, we would expect December discounts to be less than one-twelfth of the total.

marketing programs. It is a sign of a sound, competitive marketplace, not of a problem.

2. If the Commission's true concern is the potential for aggregate rate increases — either usage rates or explicit surcharges — it should be noted that a capped universal service charge would, at worst, create short-term cost pressures. Competition and technology will continue to drive long-term rates lower.
3. The more astute carriers will recognize that encouraging the deployment of telecommunications-intensive technology in schools and libraries is a win-win strategy for students and carriers alike.⁴ The computer companies recognized this potential years ago and continue to provide subsidized pricing for schools.

Nassau County BOCES believes that it is critically important that all the hard work accomplished by schools and libraries, state and local agencies, federal regulators, and program administrators in the start-up stages of the E-rate program not be undermined by a Universal Service Fund collection policy based on short-term economics. The universal service support mechanism for schools and libraries was established to encourage the effective use of educational technology on a national scale. The early signs are that the program is doing just that. The single most important step the Commission can do right now is to get the discounts flowing. It must not place the already modest funding in jeopardy.

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May 21, 1998

[An electronic copy of this filing
has been submitted via the Internet]

⁴ As an example, it has often been noted that the slowest speed access an Internet user will tolerate is the fastest they've ever seen. Students using high-speed access at school will relentlessly push their parents for similar speed access at home.